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5 In Pro se

FILED

MAR 06 2020

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

8 SHIKEB SADDOZAI,

Case No.18-cv-05558-BLF

9 Plaintiff,

10 V.

11 CLAWSON,et al.,

MEMORANDUM OF LAW IN SUPPORT  
OF MOTION FOR RECONSIDERATION  
ORDERING APPOINTMENT OF  
COUNSEL UNDER NEW GROUNDS  
NECESSARY FOR DUE PROCESS

12  
13 Defendants.

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17 Statement of the Case

18 This is a civil rights case filed under 42 U.S.C §1983 by a  
19 state prisoner and asserting claims for the unconstitutional  
20 denial of medical care out of deliberate indifference, denial  
21 of due process and for injuries inflicted resulting from the  
22 denial of medical care. The plaintiff seeks damages as to all  
23 claims.

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27 Statement of Facts

28 The complaint alleges that the plaintiff was denied serious  
medical needs by correctional officers who acted with deliber-  
ate indifference, when officers and medical personnel disregarded  
requests for medical attention based on plaintiffs complaint of  
being shot by officer, due to his negligence while being beaten  
and battered by three inmates.

1  
2 1. Factual Complexity. The plaintiff alleges that multiple  
3 correctional officers acted with deliberate indifference to a  
4 serious medical needs , when officers and medical personnel  
5 disregarded requests for medical attention based on plaintiff's  
6 complaints of pain, skin rashes, and infections while other  
7 officers stood by and watched. Plaintiff also asserts that  
8 prison supervisors were on notice of the violent propensities  
9 of some of those officers and did nothing about them .  
10 Plaintiff challenges the denial of medical care after the incident  
11 by multiple defendants. Finally when plaintiff engaged in filing  
12 a complaint officers threatened with violence and disciplinary  
13 proceedings out of retaliation to prevent plaintiff from initiating  
14 a civil rights suit, thereby violating plaintiffs due process  
15 and 1st amendment. The sheer number of claims and defendants  
16 makes this a factually complex case.

17 In addition, one of the plaintiff's claims involves the denial  
18 of medical care ; it will probably be necessary to present a  
19 medical expert witness or to cross examine medical witnesses  
20 called by defendants , or both. The presence of medical or other  
21 issues requiring expert testimony supports the appointment of  
22 counsel. *Montgomery v. Pinchak*, 294 F.3d 492, 503-04 (3d Cir. 2002);  
23 *Moore v. Mabus*, 976 F.2d 268, 272 (5th Cir. 1992); *Jackson v. County*  
24 *of Mclean*, 953 F.2d 1070, 1073 (7th Cir. 1992).

25 2. The plaintiff's ability to investigate. The plaintiff is locked  
26 up and has no ability to investigate the facts. For example,  
27 plaintiff is unable to identify, locate, and interview the  
28 inmates who were housed in nearby cells and who saw some or all  
of the events that took place. Plaintiff is in the same situation  
with regard to developing the facts as an inmate who has been  
transferred to a different institution, a factor that several  
courts have cited in appointing counsel. *Tucker v. Randall*, 948  
F.2d 288, 391-92 (7th Cir. 1991); *Gatson v. Coughlin*, 679 F.Supp.  
270, 273 (W.D.N.Y. 1988). In addition this case will require  
considerable discovery concerning the identities of witnesses,  
the officer's reports and statements about the incident, any  
prior history of denial of medical care, retaliation, misuse  
of force by the officers, and the plaintiff's medical history.  
See *Parham v. Johnson*, 126 F.3d 454, 459 (3d Cir. 1997) (holding  
counsel should have been appointed because "prisoners lack of  
legal experience and the complex discovery rules clearly put  
plaintiff at disadvantage in countering the defendants  
discovery tactics...these [discovery] rules prevented [the  
plaintiff] from presenting an effective case below").

1 plaintiff was denied immediate doctors attention, nor provided  
 2 medician for pain and suffering, plaintiff complained  
 3 of chronic pain, skin rasheses and infections to correctional  
 4 officers who refused to notify medical personnel. Medical  
 5 conditions have disabled plaintiff and has interfered with his  
 6 life activities and the existence of chronic, and substancial  
 7 pain. Correctional officers threatened plaintiff with violence  
 8 and to subsequent disciplinary proceedings to prevent plaintiff  
 9 from initiating a complaint. Each defendant at all times acted  
 10 "Under Color of State Law" some of whom are related in case  
 11 matters, actively threatened plaintiff with violence for complaining  
 12 and failed to intervene. Plaintiff alleges supervisory officials  
 13 were aware of violent propensities of some of the officers and  
 14 are liable for failing to take action to control them, who were  
 15 incharge of running facilities and provide medical services to  
 16 prisoners, and failed enforcing the policy and practice that  
 17 led to the violation of plaintiffs rights secured by the  
 18 Constitution or laws of the United States. Plaintiffs verfied  
 19 complaints filed, were ignored, and supervisory officers failed  
 20 to react, while being aware of ongoing abuse and mistreatment  
 21 by their subordinate officers and no attempts were made  
 22 to remedy problem. Plaintiff was repeatedly denied complaint,  
 23 and medical forms, & equal rights and privileges made available to  
 24 all prisoners detained in prison custody to participate in  
 25 scheduled religious services, law library, educational, mental  
 26 health, and recreational programs, nor provided means to maintain  
 27 daily personal hygiene needs, and continuously had his legal  
 28 mail violated, and destroyed to obstruct plaintiffs access to  
 the courts and from assisting in his defense.

#### 16 ARGUMENT

17 THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF.

18 In deciding whether to appoint counsel for an indigent litigant,  
 19 the court should consider "the factual complexity of the case, the  
 20 ability of the indigent to investigate the facts, the existence  
 21 of conflicting testimony, the ability of the indigent to present  
 22 his claim and the complexity of the legal issues." Abdullah v.  
 23 Gunter, 949 F.2d 1032, 1035 (8th Cir. 1991) (citation omitted).  
 24 In addition, courts have suggested that the most important factor  
 25 is whether the case appears to have merit. Carmona v. U.S  
 26 Bureau of Prisons, 243 F.3d 629, 632 (2d Cir. 2001).  
 27 Each of these factors weighs in favor of appointment of counsel  
 28 in this case.

3. Conflicting testimony. The plaintiff's accounts of the denial of medical care by officers who acted with deliberate indifference, while other officers watched and failed to intervene. Supervisory officials who were in charge of running facility and provide medical services to prisoners, failed carrying out the policy and practice that led to the violation of plaintiffs rights. This aspect of the case will be a credibility contest between the defendants and the plaintiff (and such inmate witnesses as can be located). The existence of these credibility issues supports the appointment of counsel. *Steele v. Shah*, 87 F.3d 1266, 1271 (11 Cir.1996); *Gatson v. Coughlin*, 679 F.Supp. at 273.

4. The ability of the indigent to present his claim. The plaintiff is an indigent prisoner with no legal training, a factor that supports the appointment of counsel. *Forbes v. Edgar*, 112 F.3d 262, 264 (7th Cir.1997). In addition plaintiff is confined with extremely limited access to legal materials. *Rayes v. Johnson*, 969 F.2d 700, 703-04 (8th Cir.1992) (citing lack for ready access to a law library as a factor supporting appointment of counsel).

5. Legal complexity. The number of defendants, some of whom are supervisory officials, presents complex legal issues of determining which defendants were sufficiently personally involved in the Constitutional violations to be held liable. *Hendricks v. Coughlin*, 114 F.3d 390, 394 (2d Cir.1997) (holding complexity of supervisory liability supported appointment of counsel). In addition, the plaintiff has asked for a jury trial, which requires much greater legal skill than the plaintiff has or can develop. *Solis v. County of Los Angeles*, 514 F.3d 946, 958 (9th Cir.2008) (prisoner with eighth grade education and no legal training is "ill-suited" to conduct a jury trial).

6. Merit of the case. The plaintiff's allegations, if proved, clearly would establish a constitutional violation. The denial of medical care alleged in the complaint clearly states an Eighth Amendment violation. See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.1992). The allegations of denial of medical care amount to "intentionally interfering with the treatment once prescribed," which the Supreme court has specifically cited as an example of unconstitutional deliberate indifference to prisoners medical needs. On its face, then, this is a meritorious case.

CONCLUSION

For the foregoing reasons, the court should grant the plaintiff's motion and appoint counsel in this case.

March 2, 2020,

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